VIRGINIA
LAW REVIEW

VOL. I. OCTOBER, 1913 No. 1

THE JURISPRUDENCE OF LATIN AMERICA.

THE FUSION OF ROMAN AND ENGLISH LAW IN THE NEW WORLD.

THE completion of the Panama Canal, "the greatest liberty man has ever taken with nature," will bring us into closer contact than ever before with Mexico and the states of Central and South America. In the construction of the Canal the American people will expend at least $400,000,000, about three times the capital cost of the Suez Canal, not simply for their own benefit but for that of the entire world. From Europe the Panama Canal will save 6,000 miles on the present sailing distance to our Pacific Coast ports, and 2,600 miles to points on the West coast of South America. Next to ourselves, the republics situated along that West coast will be most benefited, hampered as they now are because the only route available for them is the long and dangerous route by the Straits of Magellan, or the shorter but costly route over the Isthmus of Panama, with its double handling of freight. The closer contact, social, political and financial, which must inevitably result from more rapid and practical intercommunication, will focus, as never before, the thought of the world upon the entire fabric of Latin-American Society. The purpose of this article will be to present, within narrow limits, the results of the fusion within the Latin-American States, since the close of the French Revolution, of the two immortal products of Roman and English law.

The division of all law into public and private is as old as

Aristotle, a division arising out of the character of the persons with whom a right is connected. When both of the persons with whom a right is connected are private persons, the law regulating such a right is "private" law. When one of the persons with whom a right is connected is the State and the other a private person, the right is public, and the law regulating such a right is "public" law. In order to make that statement more vivid let us compare the State of Virginia to a watch whose case or outer shell represents her constitution, her "public" law, while her interior code, applying between private individuals, represents her "private" law. With that distinction clearly in view it will be easier to understand how it was that after centuries of growth Roman public law, constitutional and administrative, perished, leaving behind it the inner part, the private law, largely judge-made, which lives on as an immortality and universality,—as the fittest it survived. The public law of Rome, constitutional and administrative, was rejected because inapplicable to the new conditions that arose when the state system of modern Europe, in which the state as the nation is the unit, swept away and superseded the ancient state system in which the city-commonwealth had been the unit. By reason of that change the public law of Rome became entirely inapplicable to widely dissimilar conditions. What did survive was the Roman private law of family and property, of contract and tort, based on principles of natural equity and universal reason, which have not lost their force with the altered circumstances of more recent times. And here the fact should be emphasized that in the legal history of nations that part of the law which has the greatest importance for the ordinary citizen, the private civil law of family and property, of contract and tort, is the part least affected either by political change or direct legislation. Evolved, as it is, slowly and almost imperceptibly, first by popular custom, then by the refining hand of the jurist and the judgments of the courts, it grows unaffected by direct legislation, except when the supreme power is forced to expunge some error too firmly rooted for judicial remedy, or to define existing usage and condense it within the limits of a code. It is the private law of Rome, thus developed

and based on principles of natural equity and universal reason, which have not lost their force with the altered circumstances of a more advanced civilization, that has passed on to the modern world.

The genius of the Greek broke down at the threshold of law. Neither the Greeks themselves nor any society thinking or speaking in their language ever developed the smallest capacity for producing anything like a philosophical system of jurisprudence. It was reserved for the Romans to present to the world the science of positive law. As Sir Henry Maine has expressed it, jurisprudence is a Roman creation, legal science a Roman invention. All such statements must, however, be qualified and limited by the historical fact that only the private law of Rome survived as the outcome of the creative faculty of the Roman jurisconsults. The most enduring outcome of Roman civilization, surviving the wreck of two empires, was Roman private law, whose revived study during the twelfth century in the schools of Italy, France, Spain and England, has caused it to be regarded, in the modern as in the ancient world, as the perfection of human wisdom, the only true and eternal law. Roman private law, as modified by national or local family customs or land customs and by modern legislation, survives in substantially all the European countries which formed part either of the ancient or of the medieval Roman Empire. Its many strongholds in Western Europe are Italy, Spain, Portugal, France, Switzerland, Germany (including the German and Slavonic parts of the Austro-Hungarian Monarchy), Holland and Belguim. From Spain or Portugal it has passed to Mexico, Central America, South America, Cuba, Porto Rico, and the Philippines. From France or Holland it has passed to the Canadian provinces of Quebec, to Louisiana, Ceylon, Mauritius, British Guina, South Africa, French Africa, and the Dutch and French East Indies. From Germany it has passed to German Africa. To these areas must be added, in Western Europe, Scotland which, since the establishment of the Court of Session in 1532, has built up its law out of Roman civil and to some slight extent Roman canon-law materials. As outlying provinces, more or less closely connected with the sys-

tem of Roman private law, may be mentioned Greece, Servia, Bulgaria, Roumania, Russia, Poland, the Scandinavian countries and Japan.

With the exception of Brazil the private law of Rome passed, in its Spanish form, to all Latin America. Prior to the severance from the mother country the Spanish possessions in America formed nine distinct governments, constructed on the same plan and independent of each other. In each the basis was Spanish law, in the form that law had assumed after its codification in the *Siete Partidas,* which became fundamental in the colonies as in the mother country. Thus the civil law of Spain became the basis of private law in Spanish America; and, as the legislation of the mother country was often inapplicable to colonial conditions, Philip IV decreed that no law enacted in Spain should be obligatory in America unless accompanied by a *cedula* to that effect emanating from the Council of the Indies. Thus it may be stated, as a general rule, that when a case in the colonies did not fall within the provisions of the *Recopilación de Indias,* recourse was to be had to *"las leyes de la Recopilación y Partidas de estos Reynos de Castilla."* The civil law of Brazil, which occupies a vast territorial area of about 3,288,000 English square miles (not far short of the extent of Europe), was drawn from Portuguese law, fundamentally Roman. As Portugal was civilized by the Romans, it retained the impress of that civilization. The chief inspiration of the old Portuguese jurists was therefore drawn from the *Institutes* and the *Pandects,* an influence that remained undisturbed for centuries. As the laws of Portugal extended to all her dominions, the civil law of Brazil was drawn from that source, and for a long time the evolution of law was the same in Portugal and Brazil. The Portuguese laws in force at the time of the independence of Brazil were adopted as Brazilian law by an act of the Constituent Assembly of the 20th of October, 1823.

Just as Rome has given private law to the greater part of the civilized world, England has given public or constitutional law to all the nations that now enjoy what is generally known as representative government. The Teutonic invaders, who settled down upon the wreck of Rome in such a way as to occupy large

areas of territory, gave to the world the new conception of the state as the nation possessing a definite portion of the earth's surface with fixed geographical boundaries. That new conception gradually superseded the ancient conception of the state as the city-commonwealth. The completion of the transition is marked by the accession of the Capetian dynasty in France. Hugh Capet, who not only assumed the dynastic title of King of the French, but also styled himself King of France, and his descendants were Kings in the new territorial sense. The form thus assumed by the monarchy in France was reproduced in each subsequent dominion established or consolidated; and thus has arisen the state system of modern Europe, in which the idea of territorial sovereignty is the basis of all international relations. To Pericles and Cicero, who had no other conception of the state than that represented by such contracted city-communities as Athens and Rome, it would be hard to explain such vast political aggregates as France, Spain and England, inclosing within their bounds numberless city-communities.

The political systems of all the Teutonic nations, as they appear to us when written history begins, contained the germs of the representative principle, and in every one of the modern European states that have arisen out of the settlements made by the Teutonic nations on Roman soil a serious attempt has at some time been made in the direction of representative government. The remarkable fact is that in every Continental state in which such an attempt was made it ended at last in failure and disappointment. With the close of the Middle Ages every effort that had been made in the direction of representative government upon the Continent of Europe was brought to an end. Then it was that the free constitutions of Castile and Aragon were overthrown by Charles V and Philip II; then it was that the States-General of France met for the last time (1614) before their final meeting (1787) upon the eve of the French Revolution. In England only has the representative principle, which has been called "a Teutonic invention," been able to maintain a continuous existence. In that way the English nation has been able to hand down the representative principle from the barbarian epoch to modern times; in that way

England has become the "mother of parliaments," the teacher of the science of representative government to all the world.

The founding of the English state in Britain was a turning point in the political history of mankind. The Teutonic invaders came from the mainland in small companies, and, after conquering the land, bit by bit "created in Britain a Germany outside of Germany." They settled down in village communities called townships; and as the process of aggregation advanced a group of townships formed a hundred and a group of hundreds formed a shire. Finally out of an aggregation of shires arose the consolidated Kingdom of Engla-land or England. Each local community was governed by its own popular assembly, and in the process of aggregation both the local community and its assembly survived. In that way the idea of local and popular self-government became a basic element in the English mind and character. After a thousand years of growth in an island world that single state in Britain we call England stood out, upon the eve of the French Revolution, like a political lighthouse in the ocean. For centuries before that time its two-chamber parliament had been the dominant element in a constitution that recognized, according to Montesquieu, a rough division between the three departments of power, executive, legislative and judicial. By the winning of the charters, English statesmen had demonstrated how constitutional limitations could be imposed upon the central powers of the state in favor of the people.

When the time for rebuilding came, after the earthquake known as the French Revolution, the world awoke to the fact that there existed but one constitutional system that could be taken as a standard for imitation, and that was the English constitutional system with its two-chamber parliament. Since the beginning of the French Revolution nearly all the states of Continental Europe have organized national assemblies after the model of the English parliament in a spirit of conscious imitation. As Sir Henry Maine has expressed it: "The British political model was followed by France, by Spain and Portugal, and by Holland and Belguim, combined in the Kingdom of the Netherlands; and, after a long interval, by Germany;

Italy and Austria," and finally by Japan. But the typical English national assembly, embodying what is generally known as the bicameral system, was not copied into the constitutional European constitutions until it had first been reproduced in a modified form and popularized by the founders of the Federal Republic of the United States.

The two most important single events in the history of the western world were the Anglo-Saxon migration from the Continent into Britain, which began about the middle of the fifth century, and the Anglo-Saxon migration from Britain to the eastern coast of North America, which began early in the seventeenth. Out of the first migration grew the dominant state in Britain known as England; out of the second have grown the forty-six reproductions of that state which now constitute the American Commonwealth. When the offspring is compared with the parent, when the English state in America is compared with the English state in Britain, the resemblance is too close to escape the most careful observer. In both, the political substructure is the same,—the ancient Teutonic system of local, self-governing communities composed of the township, the hundred, and the shire. In each, municipal organization rests upon substantially the same foundation. So far as central organization is concerned, every American state is a mere reproduction of the central organization of the English Kingdom with such modifications as have resulted, in a widely different physical environment, from the abolition of nobility, feudality and kingship. In the new as in the old, the central powers of the state are divided into three departments,—legislative, executive, and judicial,—which, in the same qualified sense, are separate and distinct from each other. After a thousand years of persistent development in an island world the dominant state in Britain reproduced itself in each of the thirteen colonial commonwealths out of whose union arose the Federal Republic of the United States. All of the new states formed since that time have been constructed on the same model.

The physiography of North America predetermined the fact that the thirteen emancipated colonies were to unite in a federal and not in a consolidated state. The group of colonial common-

wealths, as they appeared on our Atlantic seaboard towards the close of the eighteenth century, were, in internal organization, a substantial reproduction of that older group of heptarchic Kingdoms as they appeared in Britain in the ninth. And yet, despite that likeness, the younger group in their efforts at union were unable to look to the older group for light or guidance, for the reason that the widely different geographical conditions by which they were respectively surrounded had prescribed for each a widely different destiny. Confined within the narrow and impassable bounds of an island world, it became the manifest destiny of the English states in Britain, advancing in the path of political aggregation, to coalesce in the formation of a single consolidated Kingdom. Situated on the shores of an almost boundless continent, it became the manifest destiny of the English states in America, advancing in the path of political confederation, to unite in the flexible bonds of a federal system capable of almost unlimited expansion. The first American confederation, known as the United Colonies of New England, was formed in May, 1643, upon the old requisition plan, familiar to the Plymouth men who had dwelt for a time in the United Provinces of the Netherlands. The only federal governments with whose internal organizations the builders of our Federal Republic were really familiar were those that had grown up between the Low-Dutch communities at the mouth of the Rhine, and between the High-Dutch communities in the mountains of Switzerland, and upon the plains of Germany. Down to the making of the second constitution of the United States the Confederation of Swiss Cantons, the German Confederation and the United Provinces of the Netherlands really represented the total advance made by the modern world in the structure of federal governments. President John Adams, in his inaugural address of 1797, tells us in so many words that our first federal constitution as embodied in the Articles of Confederation "was prepared from the models of the Batavian and Helvetic Confederacies, the only examples which remain with any detail and precision in history and certainly the only ones which the people at large had ever considered." All such confederacies embodied the idea of a federal

system made up of a union of states, cities, or districts, representatives from which composed a one-chamber federal assembly whose limited powers could be brought to bear, not upon individual citizens, but only upon states or cities as such.

From the Federal Convention that met at Philadelphia in 1787 emerged the second constitution of the United States, a unique creation, partly federal and partly national, which stands without a prototype in the world's history. By its terms federal power was made to operate, for the first time, directly upon individuals, and not upon states as corporations. By virtue of that principle the novel creation was empowered to levy its own taxes directly and independently of the state governments. The necessary result of that revolution was a strictly organized government divided into three departments, executive, legislative and judicial. Out of such conditions arose, for the first time in the world's history, a federal president with a fixed term of office, a two-chamber federal legislature, and a supreme tribunal armed with the power to put the stamp of nullity upon any law, state or federal, in conflict with the terms of the constitution itself. Thus was set up a new standard for imitation. The ancient conception of a federal government, based upon the requisition system, which endured from the making of the Greek leagues down to the making of the first constitution of the United States, has passed forever away,—it has become an archaism. And yet, while the unique creation of 1787 is as unlike any pre-existing federal fabric as a modern mogul engine is unlike an ancient stage coach, the fact remains that the traditional English law, as reproduced in the states, is woven into almost every part of its machinery. While the novel federal principles involved are purely American, the legal machinery through which such principles are enforced are purely English. Every American lawyer knows that the first nine amendments to the existing Constitution of the United States simply embody a Bill of Rights in which are stated, in precise and dogmatic form, all of the basic principles of the English constitutional system, as limitations on the exercise of federal or national power.

An attempt has now been made to outline the processes of

evolution through which came into existence, first, the typical English state in America, no matter whether called Virginia, Massachusetts or Oklahoma, with its law, both public and private, drawn from English sources; second, the American Commonwealth as now constituted with its law, both public and private (apart from such as is purely federal) drawn from English sources. These two types of state organization,—represented, first, by the typical English state in America as a single state; second, by the American Commonwealth as an aggregation of such states,—have been reproduced, with more or less exactness, in Latin America since the severance of the Spanish and Portuguese colonies from the mother states. That process of severance, which began in April, 1809, ended in July, 1823. By that time Spain had been deprived of all her possessions in the New World except Cuba and Porto Rico. Thus was the field cleared for the creation of popular governments, on the American plan, in the three vast areas now occupied (1) by Mexico; (2) by the Central American states of Costa Rica, Nicaragua, Honduras, Salvador, Guatemala, and Panama; and (3) by the South American states now known as the Argentine Nation, the United States of Brazil, the United States of Venezuela, the Republic of Uruguay, the Republic of Chili, the Republic of Peru, the Republic of Ecuador, the Republic of Colombia, the Republic of Paraguay, and the Republic of Bolivia. Of these seventeen sovereignties thirteen are single states and four federal unions.

Let us begin the analysis with the thirteen single states which are Gautemala, Salvador, Nicaragua, Costa Rica, Honduras, Panama, Uruguay, Chili, Peru, Ecuador, Colombia, Paraguay, and Bolivia. As the federal element does not enter into the constitutions of these single states, the student of comparative politics naturally contrasts the constitution of each with that of a single state of the American union. Each came into existence as a sovereign in the same way,—through a revolutionary process of severance from the mother country,—and, so far as political theory is concerned, Latin American statesmen have accepted the entire fabric of English fundamental legal ideas in the form in which they have been restated in the Declaration of

Independence and in the Bills of Rights which preface our state constitutions. Guatemala declares, as her sister states declare, that "the supreme power of the Nation is republican, democratic, and representative, and is divided into three branches, namely, legislative, executive, and judicial, which shall be entirely independent of each other in the exercise of their functions." That English theory, in the dogmatic form it has assumed in the North American states, is universally accepted. Chili declares that "the sovereignty is vested essentially in the Nation, which delegates its exercise to the authorities established by this constitution." The authorities so endowed with power are limited in its exercise by declarations contained in Bills of Rights usually entitled "guarantees," which secure to the citizen freedom of speech, the right of petition, due process of law, the right of habeas corpus, exemption from *ex post facto* laws, and the like. In many instances trial by jury in criminal cases is guaranteed. Nicaragua goes so far as to declare that "in civil cases the parties may have the facts passed upon by a jury. The verdict having been rendered, the judge shall limit his action to the application of the law." The movement in that direction is, however, still tentative. The constitution of Uruguay provides that "one of the first attentions of the General Assembly shall be to endeavor to establish trial by jury as soon as possible, in criminal cases and even in civil ones." The same tentative advance is being made in the direction of religious liberty. While many of the constitutions declare that "the religion of the state is Roman Catholic Apostolic," others provide a qualified freedom within the temples, or an absolute freedom, as in Honduras, where the provision is that "the free exercise of all religions shall be guaranteed." In the same way a tentative advance is being made toward the acceptance of the all-important American principle that to the judiciary belongs the right to declare unconstitutional enactments null and void. But before that principle can triumph in Latin America it must overcome the idea that the ultimate power of construction belongs to the chamber or chambers by which statutes are enacted. Typical illustrations of that idea may be found in the constitutions of Costa Rica, Uruguay, Chili, Peru, and Ecuador. In Chili the

provision is that "Congress alone shall have the power to settle, in conformity with Article 31 and the following of the constitution, any doubts that may arise in regard to the interpretations of the provisions of the same." A contrary tendency appears in the constitutions of Nicaragua, Honduras, Panama, Colombia, Paraguay, and Bolivia. The first named provides that to the judicial power belongs the right "to apply the laws in the individual cases submitted to its examination, to interpret their provisions in accordance with the spirit of the constitution, or not to apply them, on its own responsibility, when they prove to be contrary to the said constitution;" the second named provides that "the power to render judicial decisions, and to enforce them, belongs to the courts of justice. They shall apply the law to the concrete cases legally submitted to their cognizance, and shall refuse to comply with any law where it is contrary to the constitution;" the third named provides that "if the Executive objects to a bill on the ground of unconstitutionality, and the National Assembly insists upon its passage, the bill shall be referred to the Supreme Court, which shall render its decision within six days. If the action of the Assembly is sustained by the court, the Executive shall be bound to sanction and promulgate the bill as law; if the bill is pronounced unconstitutional, it shall be sent to the archives."

It is certainly worthy of note that the seven single states of South America,—Uruguay, Chili, Peru, Ecuador, Colombia, Paraguay, and Bolivia,—have, without an exception, accepted the English bicameral system in the organization of their national legislatures. In these states senates and houses of representatives, on the North American plan, are everywhere to be found. On the other hand, the six single states of Central America,—Guatemala, Salvador, Nicaragua, Costa Rica, Honduras, and Panama,—have, without an exception, constituted national legislatures consisting of one chamber only, according to the plan originally adopted by Pennsylvania and Georgia, and soon abandoned by both. Such, in general terms, is the form in which English constitutional law, with its North American modifications, has been reproduced in the constitutions of the single states

of Central and South America, which are now passing through a process of steady and hopeful development.

From what has now been said it clearly appears that the colonies founded by Spain in the New World adopted from the outset *Roman private law,* in the form it had assumed in the *Siete Partidas,* which became as fundamental in the colonies as in the mother country; second, that when such colonies were transformed into sovereign states they adopted, *as their public law,* the English constitutional system, in substantially the same form it had assumed in the original thirteen states of North America. Thus occurred upon the soil of Latin America a phenomenon which marked the beginning of a notable epoch in the history of legal development. As stated heretofore, after centuries of growth Roman public law, constitutional and administrative, perished, leaving behind it the inner part, the private law, largely judge-made, which lives on as an immortality and universality,—as the fittest it survives. In the same way and for the same reason English public law, the most distinctive and least alloyed part of that system, is living on and expanding as the one accepted model of popular government. It is, therefore, hard to overestimate the importance of the fusion now going on between Roman private and English public law in the state systems of Latin America, especially when we remember that the same process long ago extended itself to those Roman-law countries of Continental Europe which have organized national assemblies after the model of the English Parliament in a spirit of conscious imitation. The most striking illustration of that statement is to be found in France, where the outer shell of the state, embracing the entire parliamentary system, is purely English through deliberate and recent imitation, while the internal code of private law is essentially Roman. In the light of such facts who is willing to deny that out of this fusion of Roman private and English public law there is arising throughout the world a new and composite state system, whose outer shell is English constitutional law, including jury trials in criminal cases, and whose interior code is Roman private law?

The writer is humbly grateful for the good fortune that en-

abled him to be the first to perceive, while analyzing the state systems of Latin America, the existence of this marvelous process of fusion which is rapidly becoming world wide. He first announced to students of comparative politics and comparative law the outcome of his investigations in that direction in a comprehensive generalization contained in his work, "The Science of Jurisprudence," published in 1908. With no ordinary trepidation did he await the judgments of the specialists who were sure to pass upon the merits of what he had ventured to put forth as an important discovery in the history of legal development. The first to speak was one who was perhaps the best qualified to speak, the lamented Joaquim Nabuco, the eminent jurist and ripe historical scholar, who was then Brazilian ambassador at Washington. He wrote in English, of which he was a master, as follows:

"By turning co-ordination into synthesis you show the link between masses of facts apparently separate. There are in History two magnificent fabrics of social discipline and organization, the Roman private law and English political or public law. It would be impossible to survey the whole field of either without wondering at their breadth, their solidity, and their finality. You are the first, however, to merge the two into a common concern; that is, to blend together the spirits of unity and liberty, which characterize respectively the old and modern civilizations. That conception of yours is eminently suggestive and full of potentialities for new scholars; it will give a new interest both to the study of Roman law and of English institutions." The next to speak was Mr. Justice Shackelford Miller of the Supreme Court of Appeals of Kentucky, then the Dean of the Jefferson School of Law: "Indeed, it must be said, that 'The Science of Jurisprudence' is the most important contribution to the scientific side of law that has appeared on this side of the ocean since Maine's 'Ancient Law' was published in 1861. The generalization of the fusion of Roman and English law now first worked out by Dr. Taylor is an entirely new contribution to legal and political science. Like the accurate and profound generalization of Maine, that summed up the agencies of legal progress in Fiction, Equity, and Legislation, this new and equally accurate and

profound generalization of Dr. Taylor must be readily accepted by students of jurisprudence everywhere." Dr. Rudolph Sohn, the world-famous German jurist, author of the "Institutes" and President of the Commission that made the German Code of 1900, wrote as follows: "The principle formulated by you has, however, the great advantage of compressing into a short statement a thousand-year period of legal development, by means of a few words presenting a sharply defined picture of an enormous mass of material. Therefore, accept anew my congratulations upon the completion of your scholarly and valuable work, which will not fail to furnish great stimulus and encouragement to scholarship." Dr. Von L. Mitteis, the eminent Romanist of the University of Leipsic, wrote as follows: "I began immediately with the reading of the book, and am enthralled by it. The idea of representing the operation of Roman and English law in universal historical relations is as fruitful as it is splendid, and I have found in your book a great deal of instruction and inspiration. It is a work whose study appeals to the heart of every man. I, as a Romanist, am particularly delighted to find a comprehensive appreciation of the lasting and immortal significance of the Roman law in the most distant regions, and have found in it a mass of facts with which I was unfamiliar. The combination of English and Roman elements of law which you portray is most interesting, and only a scholar who possesses an almost incomprehensible knowledge of both systems of law could produce such a work. The breadth of your view has at all times excited my wonder." Mr. John Westlake, K. C. and LL. D., then Whewell Professor of International Law in the University of Cambridge, wrote as follows: "You ask me how your view of the growing together of Roman and English law, stated in the preface to your very valuable work on 'The Science of Jurisprudence,' strikes me. I think it entirely true, and important. You bring out, more largely in the book itself, that the modern mode of state existence has been developed from a Roman origin and modified by Teutonic accretions, and that those accretions have ended by furnishing the political shell, while the life of citizens within that shell continues to be lived on the main lines of Roman private law; also that, in the development of the

shell and its propagation over the world, the instruments have been England and the United States. *This is a sane and fruitful generalization. By giving its due part to each of the two great influences in history, it should assist in bringing peoples to understand one another.* The Romanist should learn to study respectfully the modifications which the English common law has made for itself in Roman private law, and the English lawyer should learn not to boast as if his common law were all, or even in the main, his national creation. Each may be content with the great claim which, barring some modifications, is allowed him." A tribute more eloquent than words came from the famous French jurist, Rodolphe Dareste, who on March 13th, 1909, made a formal presentation of "The Science of Jurisprudence" to the Institute of France. Such is the testimony which has been given by some of the greatest jurists of the world, speaking for Germany, England, France, Latin America and the United States, in support of the truth and importance of the writer's discovery that, since the close of the French Revolution, there has been going on in Latin America and in large sections of Continental Europe a fusion between Roman private and English public law. Let us hope that Professor Westlake was right when he said: "This is a sane and fruitful generalization. By giving its due part to each of the two great influences in history, it should assist in bringing peoples to understand each other."

The four federal unions of Latin America,—the United States of Mexico, the Argentine Nation, the United States of Brazil, and the United States of Venezuela,—have reproduced, with more or less exactness, the unique system, partly federal and partly national, embodied in the existing constitution of the United States. Each has adopted the "wholly novel theory" of a federal government,—strictly organized, and divided into three departments, executive, legislative, and judicial,—operating directly upon the individual and not upon states as corporations. The constitution of Mexico, which will be taken as typical, provides that "the supreme power of the Federation is divided for its exercise into legislative, executive, and judicial." It is then provided that "the legislative power of the nation is vested in a

general congress which shall consist of a chamber of deputies and a senate." The Mexican senate is armed with these extraordinary and exclusive powers: "To declare, when the constitutional, legislative, and executive powers of any state have disappeared, that the moment has arrived to give the state a provisional governor, who shall order elections to be held according to the constitutional law of the state. To decide any political questions which may arise between the powers of a state, if any of them applies to it, for that purpose, or when the constitutional order has been interrupted by an armed conflict in consequence of said question." Such significant provisions have been made necessary as a remedy in cases inevitably incident to an undeveloped state autonomy. The greatest weakness in the Latin-American political system, taken as a whole, arises out of a lack of that tenacious substructure of self-help and self-government embodied in the English township and county systems. The Mexican constitution emphasizes the weakness when it provides that, "The people exercise their sovereignty through the federal powers in matters belonging to the Union, and through those of the states in the matters relating to the internal régime of the latter. This power shall be exercised in the manner respectively established by the constitutions, both federal and state. The latter shall in no case contravene the stipulations of the federal compact." Such provisions reveal a definite and earnest purpose to construct artificially out of a province or district of Latin origin an autonomous state that shall stand to the federal head in the same independent relation in which a North American state, of English origin, stands to the federal head. The fact that such an effort is necessary emphasizes, however, the most striking fundamental difference that divides federal unions in the two Americas. The task above all others to which the statesmen of Latin America should address themselves involves, first, such a strengthening of the machinery of local self-government in the states as will make them really autonomous; second, a strengthening of the judicial power everywhere. The right of all courts to the south of us to declare all laws, state and federal, unconstitutional in proper cases should be as firmly established as in the North American system.

From the indications which have now been made of the extent to which English public law, in its North American form, has been embodied in the outer shells of Latin-American states, single and federal, it is manifest that it has been accepted as the basis of the entire constitutional system, so far as it could be assimilated by Latin peoples unfamiliar with those peculiar forms of local organization in which the English race has been trained in self-government. Nothing could be more complete than the acceptance of the English political theory of liberty, as it has been unfolded in Magna Charta down to and including the Declaration of Independence. The great formulas have been reproduced in Spanish or Portuguese forms that adhere very closely to the originals. The three fundamentals that have been accepted only tentatively are: (1) the right of the judicial power to declare laws unconstitutional; (2) trial by jury, even in criminal cases; (3) the English bicameral system of legislatures. And, yet, such decided progress is being made even in those particulars that it is not dangerous to predict that in the near future the constitutions of the Latin-American states will be identical, in every material particular, with the prototypes after which they have been modeled. But while that is being said as to the public law of such states, the fact should not be forgotten that each and all of them are clinging with tenacity to their interior codes of private law, all of Roman origin. There is no reason to doubt that, as time goes on, that immortal and universal system of private law will wax stronger and stronger in the great and growing empire to the south of us, which is destined to illustrate to the world the fact that the most perfect of all state law systems is that in which the constitutional law is English and the interior private law, Roman.

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